

December 8, 2015

The Honorable Mitch McConnell
Majority Leader
United States Senate
Washington, DC 20510

The Honorable Paul Ryan
Speaker
United States House of Representatives
Washington, DC 20515

The Honorable Thad Cochran
Chairman
Senate Committee on Appropriations
Washington, DC 20510

The Honorable Hal Rogers
Chairman
House Committee on Appropriations
Washington, DC 20515

Dear Leader McConnell, Speaker Ryan, Chairman Cochran, and Chairman Rogers:

In the aftermath of the latest—but we think by no means the last—attack on the United States by radical Islamic terrorists, and the murder and mayhem it caused, it is urgent that Congress restore and strengthen the National Security Agency’s ability to collect intelligence and the FBI’s ability to consult data already collected. We think the quickest way to begin that process is for Congress to pass a bill being advanced by Sen. Tom Cotton and other senators that would allow government investigators to consult metadata already in the NSA’s possession in aid of investigating the San Bernardino terrorist attack, and prevent the government from destroying those metadata permanently. Strong consideration should be given to attaching this bill to the omnibus spending bill that must be acted on by December 11.

This bill also would make permanent authority for roving electronic surveillance when terrorists change cell phones, and would permit individual terrorists (so-called “lone wolves”) to be treated as agents of a foreign power under the Foreign Intelligence Surveillance Act of 1978 (FISA), just as terrorists with proven affiliation to groups are treated. As well, it will repeal the “sunset” or automatic termination of FISA, a feature that simply assures that our national security professionals are never certain of their continuing authority and cannot engage in the kind of long range planning necessary for us to prevail. Given the deficiencies of the USA

FREEDOM Act, refusing to make these modifications would undermine our government's ability to keep Americans safe in an increasingly dangerous threat environment.

In view of the ghastly campaign now being conducted against Western civilization in general—as manifested by attacks in Paris and elsewhere—and the United States in particular, this is no time for this country to rely for electronic intelligence solely on an experimental system requiring that data be requested in a targeted manner from telecom carriers—which store data in differing formats for differing periods of time—rather than allowing collection directly by the government. This experimental system was mandated by the USA FREEDOM Act, and it may have insurmountable gaps in data. We should not be testing that proposition while investigating the San Bernardino attacks and trying to protect the nation from further attacks. This is also no time to permit what we understand to be the contemplated destruction of metadata already in the hands of the NSA that could be used to provide and follow leads. We need to sharpen and enhance our capabilities, not maim them.

It is impossible to overstate the urgency of the problem or the importance of this legislative solution.

Very truly yours,

Michael Mukasey

Michael Hayden

Stewart Baker

David Shedd

Ken Wainstein